IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2007

CORAM:

THE HONOURABLE MR. JUSTICE V. DHANAPALAN

W.P. No.14210 of 2004 & W.P.M.P. No.16795 of 2004

P. Jayabalan .. Petitioner

vs.

The Revenue Divisional Officer
Namakkal
Namakkal District .. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus as stated therein.

For petitioner Mr. T. Karunakaran

For respondent Mr. K. Balakrishnan, AGP (Writs)

O R D E R

This writ petition is filed challenging the order of the Revenue Divisional Officer, Namakkal, the respondent herein, in Na.Ka. 8988/03/(A5) dated 30.12.2003, seeking to quash the same and for a consequential direction to the respondent to issue Community Certificate to the petitioner's son as Bandi (SC) community.

2. The case of the petitioner is that he is residing at Nallipalayam Village, Namakkal District with his family. His son was studying in IX standard at the time of filing of the writ petition. As his son requires Community Certificate for higher studies, he has applied for the Community Certificate on 26.05.2003 to the Revenue Divisional Officer, (in short "RDO") Namakkal, the sole respondent herein. His father, grand father and great grand father lived in Nallipalayam village for several decades. The petitioner studied upto S.S.L.C. and is working as a Writer in a Government school. He and his ancestors belong to Kal Oddar caste and they used the word "Boyar" with their name as their surname. His ancestors were illiterate and they have given his caste as Boyar in his school certificate. He has produced the sale deed made in the year 1974 in

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which the words "Kal Oddar" has been prefixed to his father's name and in the other sale deeds also made in the year 1943 and 1947, the words "Kal Oddar" have been prefixed to his ancestors' name.

3. According to the petitioner, "Kal Oddar" caste is called "Bandi" and this comes under SC. In support of this contention, he relies on a Gazette Notification published in the year 1967 which has been annexed in the typed-set of papers to show that Bandis are there in all districts of Tamil Nadu and a clarification in this regard has been sent to the Secretary to Government, Adi Dravidar and Tribunal Welfare Department, on 07.06.1999 and photo copy of the proceedings also has been filed in the typedset. He had sent representations to the District Collector and Tahsildar on 09.09.2003 and since there was no response, he had filed a writ petition in W.P. No.28199 of 2003 with this Court seeking a direction to the respondent to consider his representation dated 09.09.2003 and to dispose of the same. This Court, on consideration of the case of the petitioner, passed the following order on 10.10.2003.

> "It is for the petitioner to make an application to the Revenue Divisional Officer, Namakkal seeking such certificate. On receipt of such application, the Revenue Divisional Officer is directed to consider the same and pass orders within a period of two months from the date of receipt of this order..."

4. As per the above direction of this Court, the petitioner has forwarded an application to the respondent on 03.11.2003 and thereafter, the respondent has passed an order in his proceedings dated 30.12.2003 rejecting the petitioner's claim and this is the proceedings impugned in this writ petition.

5. The grounds on which the petitioner has filed this writ petition are that:

a. his ancestors belong to Kal Oddar caste and the sale deed in his ancestors' name show that they are Kal Oddars;

b. the Gazette Notification published in 1967 wherein it is stated that the Bandi caste falls under SC has not been considered by the respondent;

c. the respondent's finding that the petitioner belongs to Hindu Boyar community which comes under MBC is not correct as in Namakkal District, Hindu Boyars were given SC certificate without any evidence.

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d. the list of relatives provided by him who belong to Kal Oddar or Bandi caste, for verification, has not been taken into consideration by the respondent;

e. one of his relatives by name Kannaiyan has obtained Community Certificate for his children as Bandi and therefore, he has to be considered as a Bandi.

f. the finding of the respondent in the impugned order that his relatives are Hindu Boyars based on their school records is not correct and that cannot be taken as evidence to decide the issue.

g. the respondent has acted with non-application of mind and the impugned order is in violation of the fundamental right guaranteed under Article 14 of the Constitution of India and the act of the respondent is unfair, arbitrary and violative of principles of natural justice.

6. The respondent has filed counter and his case is as follows:

a. The application of the petitioner to obtain Community Certificate as Bandi to his son was rejected by the then Tahsildar since he belongs to Boyar (MBC). The fact that the petitioners' ancestors lived in Nallipalayam village for several decades and they belong to Kal Oddar community is not disputed. The petitioner cannot claim his caste as Bandi (SC) merely because his caste name was called and mentioned as Kal Oddar. The Madras District Gazette, Salem, published in the year 1967, has provided a detailed definition regarding the origin of Bandi (SC) community, its culture and traditions which have not been found either with the petitioner or among his relatives. On enquiry, the relatives of the petitioner also have given statements to the effect that they belong to Boyar (MBC) community even though their community is called as Oddar or Kal Oddar. The Boyar community (MBC) people are usually called with surname Oddar or Kal Oddar; but their culture and tradition are totally different from that of SC community. The Oddars who originally came from Orissa can only be treated as Bandi (SC) and the petitioner and his relatives are having the origin of Tamil Nadu and hence, they have been classified under the category of Boyar (MBC) community. The relatives of the petitioner have concretely stated that they have no documentary or oral evidence for the claim of the petitioner as Bandi (SC) community and therefore, in the absence of any proof, the petitioner is not entitled to get the Community Certificate as Bandi (SC).

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b. Based on the representation received by the Government, the Principal Commissioner and Commissioner-Revenue Administration, Chennai, in his letter dated 25.04.2001, has instructed the District Collectors of the respective Districts for issuance of Bandi community certificate, in which he has instructed to issue Community Certificates only to the eligible persons and that action should be initiated against those ineligible persons producing bogus and false evidence for getting the same.

c. Since the petitioner's application for issuance of Community Certificate as Bandi (SC) to his son was rejected by the Tahsildar, Namakkal (which is not challenged by the petitioner nor the Tahsildar has been impleaded as a party in the petition) on the ground that he belongs to Boyar (MBC) community, the petitioner filed a writ petition before this Court and this Court, on 10.10.2003 directed the petitioner to make an application to the respondent herein seeking such certificate on receipt of which the respondent has to pass orders within a period of two months from the date of receipt of such application. Accordingly, on receipt of an application dated 03.11.2003 from the petitioner, he was summoned for enquiry on 17.11.2003 before the respondent and was orally enquired. During the enquiry, he was asked to produce Community Certificate obtained by any one of his relatives for which he replied that he is the only educated person among his relatives and employed as a clerk in Education Department and his relatives as well as the relatives in his wife's side are not educated and all of them are engaged in stone quarrying work in Minnampalli Village, Namakkal Taluk. On his failure to furnish addresses of his ten relatives, he was summoned again for enquiry on 27.11.2003 and he stated that his father and grand father were engaged in stone-breaking work and that his caste is unknown as Bandi and since his ancestors were engaged in stone quarrying work and they were speaking Telugu, his son has to be issued Bandi community certificate. At the end of enquiry, he furnished seven addresses of his relatives residing in Nallipalayam village and five addresses of his wife's side relatives at Minnampalli village at Namakkal Taluk.

d. After a detailed enquiry with the relatives of the petitioner and his wife by the team of revenue officials and by the RDO, it has been found that the petitioner and his relatives do not belong to Bandi (SC) community and the Bandi (SC) community certificate obtained by the said Kannayyan in respect of his children were subsequently ordered to be cancelled by the Tahsildar by his order dated 25.03.2004 on the ground that they were obtained by producing bogus evidence and in view of these facts gathered on the basis of personal enquiry and spot enquiry

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with the petitioner, his relatives and public, the claim of the petitioner for issuance of a Bandi (SC) community certificate to his son was rejected and a speaking order, without any infirmity, was passed by the respondent to this effect and the same is challenged in this writ petition.

7. The petitioner has filed his reply affidavit denying the averments of the respondent in the counter affidavit and I have perused the same.

8. Heard Mr. T. Karunakaran, learned counsel for the petitioner and Mr. K. Balakrishnan, learned Additional Government Pleader for the respondent.

9. The learned counsel for the petitioner has contended that the claim of the petitioner is based on (i) three sale deeds, (ii) definition to Bandi community given in 1967 Gazette Notification and (iii) the Bandi (SC) community certificate obtained by Kannayyan, one of his relatives and the enquiry conducted by a team of revenue officials reveals that they belong to Kal Oddar which is defined as a Bandi (SC) community and therefore, the petitioner's claim is a legitimate one and as such, he is entitled to get the Bandi (SC) community certificate and the action of the respondent in passing the impugned order is arbitrary and hence, the order passed by him has to be set aside and also a consequential direction has to be issued to the respondent to issue Bandi (SC) community certificate to the petitioner's son.

10. In support of his contentions, the counsel for the petitioner has relied on a judgment of the Supreme Court reported in 2005 (12) SCC 248 in the case of State of Bihar & others vs. Sumit Anand (para 6)

> "We have perused the findings recorded by the Division Bench as well as the Single Judge of the High Court. In view of the fact that the respondent's father, grandfather, mother and maternal uncle had all been granted the certificate certifying that they belong to the "Gond" community, we see no reason to come a conclusion other than the one arrived at by the High Court to the effect that the respondent was entitled to issuance of the caste certificate."

11. He has placed further reliance on a judgment of the Supreme Court reported in (1996) 3 SCC 685 in the case of Gayatrilaxmi Bapurao Nagpure vs. State of Maharashtra & Others and the relevant portion reads as under: (paras 14, 15 and 17)

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"Taking into consideration these certificates and also the order of the Government dated 01.09.1981 certifying that Abinash Prabhakar Nagpure, first cousin of the appellant belongs to 'Halba' community, we are of the view that the rejection of the appellant's claim especially when there is no other evidence placed contra to suspect the proof produced by the appellant and without appreciating the vital document placed before the Committee, is correct.

It is true that this Court in Madhuri Patil case has observed:

> "The Committee which is empowered to evaluate the evidence placed before it when records a finding of fact, it ought to prevail unless found vitiated by judicial review of any High Court subject to limitations of interference with findings of fact. The Committee when considers all the material facts and records a finding, though another view, as a court of appeal may be possible, it is not a ground to reverse the findings. The court has to see whether the Committee considered all the relevant material placed before it or has not applied its mind to relevant facts which have led the Committee ultimately to record the finding. Each case must be considered in the backdrop of its own facts."

Applying the above test to the facts of the present case, we are satisfied that the Committee failed to consider all the relevant materials placed before it and did not apply its mind to an important document "Sl.No.9" which led the Committee ultimately to record a finding against the appellant. By a wrongful denial of the caste certificate to the genuine candidate, he/she will be deprived of the privileges conferred upon him/her by the Constitution. Therefore, greater care must be taken before granting or rejecting any claim for caste certificate."

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12. On the other hand, the Additional Government Pleader has strenuously contended that the documents produced by the petitioner themselves would show that the petitioner's father and ancestors are Kal Oddars for several decades and they belong to Hindu Boyar community and the Madras District Gazette Notification published in 1967 has provided a detailed definition regarding the origin of Bandi (SC) community, their culture and tradition which have not been found either with the petitioner or among his relatives and the Government has also instructed the Collectors for issuance of Bandi community certificates only to eligible persons and to take serious action against those applying for community certificates by producing any bogus or false certificates.

13. The learned Additional Government Pleader has also pointed out that the certificates issued to the children of Kannayyan, were subsequently cancelled as it was found out that he had obtained the same by giving false evidence and therefore, the contention of the petitioner that his relative Kannayyan is a Bandi belonging to (SC) and hence, his son has to be issued Bandi (SC) community certificate, does not have legs to stand and in the absence of any documentary proof on the petitioner’s side, the respondent has followed the due process of law by way of conducting a proper enquiry and passing a speaking order, after affording an opportunity to the petitioner and therefore, there is no infirmity whatsoever with the order passed by the respondent and as such, the same should be upheld and the writ petition dismissed.

14. On a careful analysis of the case of the parties and perusal of the documents filed in support of their support, it is not in dispute that the petitioner’s ancestors were living in Tamil Nadu for several decades and they belong to Kal Oddar community. But, in the affidavit filed by the petitioner, he has nowhere stated that his ancestors were originally from Orissa or any other part of India and have migrated to this State and they have the practice, culture and tradition of the Bandi (SC). Many of his relatives have given statement that they belong to Kal Oddar community or Boyar community coming under (MBC) and the Boyar community people are usually called with surname Oddar or Kal Oddar and their culture and tradition are totally different from that of Bandi (SC) community.

15. It is seen from the petitioner’s case as well as the enquiry conducted with him, his relatives and the public that the petitioner and his relatives are having the origin of Tamil Nadu and they have not originated from Orissa or any other place. Further, concrete and clear statements given by seven relatives of the petitioner and five relatives of the petitioner’s wife also confirm

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that they belong to Kal Oddar or Boyar community and not to Bandi (SC) community. Further, it is also relevant to point out here that in the Constitution (Scheduled Castes) Order, 1950, under the list of Scheduled Castes in Tamil Nadu, in Serial No.9, the Bandi community is identified as SC category. Whereas in the Appendix to Tamil Nadu State and Subordinate Services Rules, Schedule I, Part B, the Boyar or Oddar community falls under MBC category.

16. As pointed by the Additional Government Pleader, the claim of the petitioner that one Kannayyan, one of his relatives, has obtained Bandi (SC) community certificates for his children and therefore, his son has to be issued a Bandi (SC) community certificate cannot be sustained since the same were ordered to be cancelled by an order dated 25.03.2004 passed by the Tahsildar on the ground that they were obtained by producing false evidence.

17. The enquiry conducted with the petitioner, his relatives and public clearly shows petitioner belongs to Kal Oddar or Boyar community which comes under the definition of Boyar (MBC) community. As the enquiry has been conducted in a proper manner in the presence of the petitioner, his relatives and also the public, the contention of the petitioner that the principle of natural justice has not been followed cannot be accepted. That apart, it is seen that the respondent has come to the conclusion that the petitioner belongs to Kal Oddar or Boyar community not only by way of enquiry conducted with him, his relatives and public but also by the school records of the petitioners' relatives whose addresses were given by the petitioner himself which show that they belong only to Kal Oddar or Boyar community. The petitioner, having given the addresses of his relatives to the respondent during enquiry, cannot raise a ground that the respondent has gone wrong in relying on the school records of his relatives. Lastly, it is also relevant to point out here that in the Constitution (Scheduled Castes) Order, 1950, in the Serial No.9, the Bandi community is identified as a community falling under SC category. Whereas in Appendix to Tamil Nadu State and Subordinate Services Rules, Part – B, it is stated that the Boyar/Oddar community falls under the of MBC category.

18. At this juncture, it would be useful to refer to a decision of the Supreme Court reported in (2001) 1 SCC 4 in the case of State of Maharashtra vs. Milind and others wherein the object of giving concessions in education and employment to the people in lower stratum of society is emphasised: (para 35)

> "In order to protect and promote the less fortunate or unfortunate people who have been suffering from social handicap, educational backwardness besides other disadvantages, certain provisions are made in the

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> Constitution with a view to see that they also have the opportunity to be on par with the others in the society. Certain privileges and benefits are conferred on such people belonging to Scheduled Tribes by way of reservations in admission to educational institutions (professional colleges) and in appointment in services of State. The object behind these provisions is noble and laudable besides being vital in bringing a meaningful social change. But, unfortunately, even some better-placed persons by producing false certificates as belonging to Scheduled Tribes have been capturing or cornering seats or vacancies reserved for Scheduled Tribes defeating the very purpose for which the provisions are made in the Constitution. The Presidential Orders are issued under Articles 341 and 342 of the Constitution recognising and identifying the needy and deserving people belonging to Scheduled Castes and Scheduled Tribes mentioned therein for the constitutional purpose of availing benefits of reservation in the matters of admissions and employment. If these benefits are taken away by those for whom they are not meant, the people for whom they are really meant or intended will be deprived of the same and their sufferings will continue. Allowing the candidates not belonging to Scheduled Tribes to have the benefit or advantage of reservation either in admissions or appointments leads to making mockery of the very reservation against the mandate and the scheme of the Constitution.

19. It is also relevant to refer to yet another decision of the Supreme Court reported in (1994) 6 SCC 241 in the case of Kumari Madhuri Patil and another vs. Additional Commissioner, Tribal Development and others which says that no sympathy need be shown to a person if it is found that he, who is seeking a community certificate, has played fraud or does not deserve the same: (para 16)

> ". . .The courts have constitutional duty and responsibility, in exercise of the power of its judicial review, to see that constitutional goals set down in the Preamble, the Fundamental Rights and the Directive

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> Principles of the Constitution, are achieved. A party that seeks equity, must come with clean hands. He who comes to the court with false claim, cannot plead equity nor the court would be justified to exercise equity jurisdiction in his favour. There is no estoppel as no promise of the social status is made by the State when a false plea was put forth for the social status recognised and declared by the Presidential Order under the Constitution as amended by the SC & ST (Amendment) Act, 1976, which is later found to be false. Therefore, the plea of promissory estoppel or equity have no application. When it is found to be case of fraud played by the concerned, no sympathy and equitable considerations can come to his rescue. Nor the plea of estoppel is germane to the beneficial constitutional concessions and opportunities given to the genuine tribes or castes. Courts would be circumspect and vary in considering such cases."

20. From the aforesaid discussion and on a meticulous appreciation of the material evidence, I am of the considered view that the petitioner belongs only to Hindu Boyar community and does not belong to Bandi (SC) community, as claimed by him and the respondent has considered all aspects of the matter, including the fundamental right of the petitioner under Article 14 of the Constitution of India, while passing the order dated 31.12.2003 which is of speaking nature, giving therein, cogent and convincing reasons in rejecting the case of the petitioner in issuing Bandi (SC) community certificate to his son.

In view of the above findings and the rulings of the Supreme Court referred to above in the context of the case on hand, I find no valid reason to interfere with the order of the respondent and as such, it is upheld and accordingly, the writ petition stands failed and is, therefore, dismissed without any order as to costs. Consequently, the connected W.P.M.P. is closed.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

cad

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To

The Revenue Divisional Officer
Namakkal
Namakkal District

+1cc to Mr.T.Karunakaran,Advocate Sr 6510

+1cc to Govt. Pleader Sr 6660

TEJ (CO)
kk/5.2.

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